

CHILD WELFARE CODE

(amended September 18, 1997)

TITLE 14

HOOPA VALLEY TRIBAL CODE

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TITLE 14

ORDINANCE OF THE HOOPA VALLEY TRIBE HOOPA INDIAN RESERVATION HOOPA, CALIFORNIA

ORDINANCE NO: 2-90

DATE APPROVED: Amended September 18, 1997

SUBJECT: TO ESTABLISH RULES, PROCEDURES AND CRITERIA FOR GOVERNING ADOPTION AND FOSTER HOME PLACEMENTS AND OTHER ACTIVITIES INVOLVING INDIAN CHILDREN UNDER THE AUTHORITY OF THE INDIAN CHILD WELFARE ACT.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (1) of this Constitution and Bylaws authorized the Hoopa Valley Business Council, " To safeguard and promote the peace, safety, morals, and general welfare of the Hoopa Valley Indians....", and

WHEREAS: The Hoopa Valley Tribe has by referendum vote in June 1985 established as a Tribal priority the enactment of a children's code to assure the protection of Indian children and their cultural heritage under the authority of Tribal and Federal Law pursuant to the Indian Child Welfare Act, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribal Council, under its authority under the Constitution of the Hoopa Valley Tribe and under as authorized by referendum vote of the Hoopa membership, does hereby enact this Child Welfare Code of the Hoopa Valley Tribe As Title 14 of the Law and Order Code of the Hoopa Valley Tribe and that this Code shall be in full force and effect.

CHAPTER 1: GENERAL PROVISIONS

14.0 SHORT TITLE

The short title of this Act shall be the Child Welfare Code of the Hoopa Valley Tribe.

4.1.1 AUTHORITY

The membership of the Hoopa Valley Tribe did in June 1983 approve by referendum election the Hoopa Valley Business Council to enact a Child Welfare Code for reassumption of child welfare matters under the authority established in the Indian Child Welfare Act.

14.1.2. ESTABLISHMENT OF TRIBAL CHILDREN'S COURT

There is hereby established a Children's Component of the Hoopa

Tribal Court with the authority to enforce this Code. Except as provided herein, the procedures of the Tribal Children's Court shall be the same those used by the Tribal Court.

14.1.3. APPOINTMENT OF CHILDREN'S COURT JUDGE

The Chief Judge of the Hoopa Tribal Court shall appoint from within the composition of Tribal Court Judges a judge whose primary function shall be to hear court actions brought under the authority of this Code.

14.1.4. PURPOSE

The purposes of this Code are defined as follows:

14.1.4.1 To secure for each child subject to these provisions such care and guidance, preferably in his/her own home, as will best serve his/her own home, as will best serve his/her welfare and the interests of the Hoopa Valley Tribe and society in general;

14.1.4.2 To preserve and strengthen family ties whenever possible, including improvement of the home environment;

14.1.4.3 To protect and preserve the Tribal heritage and cultural identity of the child;

14.1.4.4 To remove a child from the custody of his/her parents ONLY when his/her welfare and safety or the protection of the public would otherwise be endangered; and

14.1.4.5 To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him/her in becoming responsible and productive manner of his tribe and society in general.

14.1.5.0 DEFINITIONS

As used in this title, unless the context otherwise requires:

14.1.5.1 "ADJUDICATORY HEARING" means a hearing to determine whether the allegations of a petition are supported by evidence beyond a reasonable doubt or the allegations of a petition are supported by a preponderance of the evidence.

14.1.5.2 "ADULT" means a person eighteen years of age or over; except that any minor eighteen years of age or over under the continuing jurisdiction of the court, or who is before the court for an alleged delinquent act committed prior to his eighteenth birthday, or concerning whom a petition has been filed for his adoption other than under this Title, shall be referred to as a child.

14.1.5.3 "CHILD-INDIAN" or "INDIAN CHILD" means a an unmarried

person who is an enrolled member of a federally recognized Tribe who is under eighteen years of age; an unmarried person who is eligible for membership in the Hoopa Valley Tribe and is under eighteen years of age; or an unmarried person who is an immediate descendant of an enrolled member of the Hoopa Valley Tribe and is under eighteen years of age. Whenever necessary, the singular form shall be interpreted as the plural, i.e., child interpreted as children.

14.1.5.4 "CHILD-MEMBER" means, for the purposes of this Code, a child under eighteen years of age who is an enrolled member or who is eligible for membership in the Hoopa Valley Tribe.

14.1.5.5 "CHILD CARE CENTER" means a facility licensed and approved pursuant to law. If such facility is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.

14.1.5.6 "CHILD IN NEED OF SUPERVISION" means any child:

(a) who has repeatedly disobeyed reasonable and lawful commands or directives of his parents, or legal guardian, or other custodian: or

(b) who is willfully and voluntarily absent from his home without the consent of his parent or guardian or legal custodian for a substantial length of time or without intent to return: or

(c) who being subject to compulsory school attendance, the child is willfully and voluntarily absent from school in violation of law.

14.1.5.7 "CHILD PROTECTION AGENCY" means an agency licensed or approved pursuant to law. If such agency is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.

14.1.5.8 "COMMIT" means to transfer legal custody.

14.1.5.9 "DELINQUENT CHILD" means:

(a) a child who has violated any federal, state, or tribal law or any lawful order of the court made under this act; to

(b) a child who has violated traffic laws or traffic ordinances.

14.1.5.10 "DEPRIVATION OF CUSTODY" means transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency, or institution.

14.1.5.11 "DETENTION" means the temporary care of a child who

requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

14.1.5.12 "DISPOSITIONAL HEARING" Means a hearing to determine what order of disposition should be made concerning a child adjudicated as a delinquent, in need of supervision, or neglected or dependent. Such hearing may be part of the proceeding which includes the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.

14.1.5.13 "EXTENDED FAMILY--RELATIVE" means a member of the family related by blood who is an enrolled member of the tribe.

14.1.5.14 "FAMILY CARE HOME" means a facility licensed and approved pursuant to law. If such facility is located outside the tribe's jurisdiction it shall be licensed or approved as required by the jurisdiction in which the facility is located.

14.1.5.15 "GROUP CARE FACILITIES AND HOMES" means places other than foster family care homes providing care for small groups of children.

14.1.5.16 "GUARDIANSHIP OF THE PERSON" means the duty and authority vested by court action to make major decisions affecting a child including, but not limited to:

(a) the authority to consent to marriage, to enlistment in the arm forces, and to medical and surgical treatment;

(b) the authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child.

(c) the authority to consent to the adoption of a child when the parent/child relationship has been terminated by judicial decree; and,

(d) the rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

14.1.5.17 "INDIAN CUSTODIAN" means an Indian person in whose care a child is entrusted by informal agreement between that person and the child's parent.

14.1.5.18 "CHILDREN'S COURT OR COURT" means the Children's Court of the Hoopa Valley Tribe established herein to handle child matters.

14.1.5.19 "LEGAL CUSTODY" means the right to the care, custody,

and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by court action.

14.1.5.20 "NEGLECT OR DEPENDENT CHILD" OR "DEPENDENT AND NEGLECTED CHILD" MEANS A CHILD:

(a) whose parent, guardian, legal custodian, or Indian custodian has abandoned him or has subjected him to mistreatment or abuse or whose parent, guardian or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse, including physical abuse and sexual exploitation, and prevent it from recurring.

(b) who lacks proper parental care through the actions or omissions of the parent, guardian, legal custodian, or Indian custodian.

(c) whose environment is injurious to his welfare;

(d) whose parent, guardian, legal custodian, or Indian custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other necessary care for his health, guidance, or well-being;

(e) who is homeless, without proper care, or not domiciled with his parent, guardian, legal custodian, or Indian custodian;

14.1.5.21 "PARENT" means either a natural parent of a child or a parent by adoption;

14.1.5.22 "PROTECTIVE SUPERVISION" means a legal status created by court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the court, the Tribal Social Service Department, or other agency designated by the court.

14.1.5.23 "RESIDUAL PARENTAL RIGHTS AND RESPONSIBILITIES" means those rights and responsibilities remaining with a parent after legal custody, guardianship of the person, or both have been not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child's religious affiliation.

14.1.5.24 "SHELTER" means the temporary care of a child in physically unrestricting facilities pending court disposition or

execution of a court order for placement.

14.1.5.25 "TERMINATION OF PARENT/CHILD LEGAL RELATIONSHIP" means the permanent elimination by court order of all parental rights and duties, including any residual parental rights and responsibilities.

14.1.5.26 "TRANSFER PROCEEDINGS " means any proceeding in the tribal court to accept or decline transfer from any state court or other tribal court of any court proceeding for the foster care placement of or termination of parental rights to any Indian child.

14.1.5.27 "TRIBAL PRESENTING OFFICER" means a representative of the Tribe who is officially designated to present issues on behalf of the Tribe arising under this code.

14.1.6 JURISDICTION

14.1.6.1 The Children's Court shall have exclusive jurisdiction, with respect to the matters addressed in this Children's code, over all Indian children resident or domiciled within the exterior boundaries of the Hoopa Valley Indian Reservation or who are wards of the Court. The Court may, or if compelling reason is demonstrated, decline transfers of jurisdiction from any other court pursuant to Title I, Section 101 (b) of Pub. Law 95-608, the Indian Child Welfare Act, 25 U.S.C. sec. 1911 (b), over any case involving a Hoopa Indian child. The Court may also offer to transfer jurisdiction of a case to any other court if it appears that another court is a proper forum.

14.1.6.2. Except as otherwise provided by law, the Children's Court shall have exclusive jurisdiction in proceedings under the authority of this title:

- (a) Concerning any child in need of supervision;
- (b) Concerning any child who is neglected or dependent;
- (c) Concerning any transfer proceeding;
- (d) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the children's court jurisdiction.
- (e) For the issuance of orders of support of minor children.
- (f) To determine the parentage of a child and to make order of support in connection therewith.
- (g) For the adoption of a child and to make an order of support

in connection therewith.

(h) For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.

14.1.6.3 Except as otherwise provided by law, the Children's Court shall have jurisdiction in proceedings concerning any adult:

(a) Who induces, aids, or encourages a child to violate any federal, tribal, or state law.

(b) Who abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction.

(c) Who violates any duly served order of the court.

14.1.6.4 The court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his/her case.

14.1.6.5 Nothing in this section shall deprive the tribal court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child when the question of legal custody is incidental to the determination of a cause in the tribal court, except that:

(a) If a petition involving the same child is pending in juvenile court or if continuous jurisdiction has been previously acquired by the juvenile court, the tribal court shall certify the question of legal custody to the juvenile court; and

(b) The tribal court at any time may request the children's court to make recommendations pertaining to the guardianship or legal custody.

14.1.6.6 Where a custody award has been made in the tribal court in a dissolution of marriage action or another proceeding and the jurisdiction of the tribal court in the case is continuing, the same child if he is dependent or neglected or otherwise comes within the jurisdiction set forth herein.

14.1.6.7 The Tribal Council may enter into cooperative enforcement and service agreements with government agencies, other Indian tribes, organizations and individuals for the proper enforcement of this Code.

14.1.6.8 The Tribal Social Services Department may develop, subject to Council approval, rules, regulations and procedures

for determining the selection of cases to be handled and other matters arising under this Code.

14.1.6.9 For determining who is an Indian for purposes of this Code, the Tribal Enrollment Committee shall have such authority for children of enrolled members. The Bureau of Indian Affairs or the Indian tribe of either or both parents shall determine who is an Indian for non-member children.

14.1.7 INDIAN CHILD WELFARE ACT TRANSFERS

14.1.7.1 INDIAN CHILD WELFARE TRANSFERS FROM STATE COURTS

(a) Pursuant to the Indian Child Welfare Act, any local or state court may transfer to the Children's Court herein any proceeding for the foster care placement of, or termination of parental rights to, member or Indian child within the jurisdiction of the court, if the Children's Court finds that the transfer would not be detrimental to the best interests of the child.

(b) The Children's Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer proceeding initiated by the Tribe after the order of transfer is received by the court clerk.

(c) A court transferring a case to the Tribe's jurisdiction under subsection (a) of this section shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, which court shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court.

14.1.7.2 INDIAN CHILD WELFARE ACT TRANSFER FROM OTHER TRIBAL COURTS

(a) When requested by another tribal court, by specific agreement, to have Hoopa jurisdiction apply, any proceeding over which this Court has jurisdiction pursuant to this Title, may be transferred to the Hoopa Tribal Children's Court.

(b) If the Court finds that tribal jurisdiction shall apply, transfer proceedings will be made pursuant to subsection 1 of this section.

14.1.7.3 INDIAN CHILD WELFARE ACT TRANSFERS FROM HOOPA TRIBAL CHILDREN'S COURT

(a) The Hoopa Tribal Children's Court may transfer to the juvenile court of another tribe any proceeding over which this court has jurisdiction pursuant to this chapter, and if the children's court finds that the transfer would not be detrimental

to the best interest of the child.

(b) If transfer to the other tribe is in the best interest of the child, the Children's Court shall transmit all documents, legal and social records or certified copies thereof, to the receiving court.

14.1.8 LEGAL REPRESENTATION

14.1.8.1 RIGHT TO COUNSEL - OTHER THAN HOOPA TRIBE

(a) At his first appearance before the Court, the child and his parents, guardian, or other legal custodian shall be fully advised by the Court of their legal rights, including the right to be represented by counsel, at his own expense, at every stage of the proceedings.

(b) If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent such are available at no fee, shall be appointed by the court in proceedings Child in Need of Supervision or under Child who is neglected and/or dependent, when termination of the parent/child legal relationship is stated as a possible remedy in the summons.

(c) The Court may appoint counsel without request if it deems representation by counsel necessary to protect the interest of the child or of other parties.

14.1.8.2. REPRESENTATION OF THE HOOPA TRIBE

(a) Tribal Social Services Department is authorized to act as the Presiding Officers and to represent the position of the Tribe in Tribal Court Proceedings arising under this Code, and in proceedings in state courts that are subject to transfer of jurisdiction to the Tribal Court under the Indian Child Welfare Act or in which the Tribe has a right to intervene as a party.

(b) The Tribal Social Services staff shall develop and maintain a file on any proceedings in which tribal participation is contemplated, as set forth in section (a) above. Such file shall include all papers filed in the proceedings, and social worker or related assessments, whether or not filed in court.

(c) The Social Service Department staff may consult with the Legal Department in fulfilling their responsibilities under this Section. If the Department staff desire Legal Department representation in the proceeding, the case file shall be forwarded to the Legal Department at the time the request is made for such representation.

(d) The legal Department shall provide a written recommendation

to the Social Department and to the Tribal Chairman regarding the need for Legal Department representation in any judicial proceeding. Legal Department representation may take into the workload on other priority matters, and the significance or difficulty of the legal issues presented in the proceeding. The Tribal Chairman is authorized to approve the Legal Department's participation in the proceeding, or the chairman may in his discretion seek the advise of the Council.

(e) In any proceeding in which the Tribe is represented by the Legal Department, the Social Service Department shall continue to be responsible for maintaining and updating the case file, including supplemental or other investigative work as requested by the Legal Department.

14.1.9 HEARINGS, PROCEDURES, RECORDS & PUBLICITY

14.1.9.1 The rules and procedure set forth in this Title shall apply in all proceedings under this section.

14.1.9.2 Hearings shall be held before the court without a jury in closed session and may be conducted in a informal manner, except in termination and foster proceedings. The Court shall admit only such persons as it deems proper, including persons whom the parents or guardians wish to be present. Hearings may be continued from time to time as ordered by the Court.

14.1.9.3 A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a mediator, unless waived by the parties in the proceedings and so ordered by the judge or mediator.

14.1.9.4 When more than one child is named in a petition alleging need of supervision, or neglect or dependency, the hearings may be consolidated; except that separate hearings may be held with respect to disposition.

14.1.9.5 Children's cases shall be heard separately from adult cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

14.1.9.6 The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in proceedings shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars (500).

14.1.10 SOCIAL STUDY AND OTHER REPORTS

14.1.10.1 Unless waived by the Court, the Tribal Social Services Department or other agency designated by the court shall make a social study and report in writing in all Children's cases, except:

(a) If the allegations of a petition filed are denied, the study shall not be made until the court has entered an order of adjudication as provided herein; and

(b) The study and investigation in all adoptions shall be made as provided herein.

14.1.10.2 For the purpose of determining proper disposition of a child, written reports and other material relation to the child's mental, physical, and social history may be received and considered by the Court along with along with other evidence; but the court, if so requested by the child, his parent or guardian, or other interested party shall require that the person who wrote the subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian or other party to the proceedings so requires.

14.1.10.3 The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in this section.

14.1.11 EFFECT OF PROCEEDINGS

14.1.11.1 No adjudication of disposition in proceedings shall impose any civil disability upon a child or disqualify him from any tribal personnel system or military service application or appointment or from holding tribal office.

14.1.11.2 No adjudication, deposition, or evidence given in proceedings shall be admissible against a child in any criminal or other action or proceeding.

14.1.12 MEDIATOR-QUALIFICATIONS/DUTIES

14.1.12.1 The Children's Court may appoint one or more mediators to hear any case or matter under its jurisdiction. Mediators shall serve at the pleasure of the Court, unless otherwise provided by law.

14.1.12.2 Mediators may conduct hearings in the manner provided

for the hearing of cases by the Court. Prior to any hearing, except those at which the child is advised of his rights and either admits or denies the allegations of the petition, the mediator shall inform the parties that they have the right to a hearing before the Children's Court Judge in the first instance, except on probable cause hearings, and that they may waive that right, but that by waiving that right, they are bound by the findings and recommendations of the mediator, except as provided in subsection (4) Of this section. If a request is made for this section. If a request is made for a hearing before a Children's Court judge in the first instance, the mediator shall terminate the hearing and transmit the case to the appointing judge.

14.1.12.3 At the conclusion of a hearing the mediator shall:

(a) Transmit promptly to the Children's Court judge all papers relating to the case together with his findings and recommendations in writing.

(b) Advise the parties before him of his findings and recommendations.

(c) Advise the parties of their right to review of the findings and recommendations by the Children's Court Judge.

14.1.12.4 A request for review shall be filed within five days after the conclusion of the hearing and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the mediator.

14.1.13 COURT RECORDS-INSPECTION-EXPUNGEMENT

14.1.13.1

(a) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys, and other parties in proceedings before the court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in adoption and relinquishment shall be confidential and open to inspection only by court order.

(b) With consent of the Court, records of the court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in relinquishment and adoption proceedings.

(c) Probation counselor's records and all other reports of social and clinical studies shall not be open to inspection, except by consent of court.

14.1.13.2

(a) Any person may petition the court for the expungement of his record and shall be so informed at the time of adjudication, or the court, on its own motion may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two years from the date of termination of the Court's jurisdiction of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

(b) Upon filing of a petition or entering of a court order, the Court set a date for a hearing and shall notify the tribal prosecutor and anyone else whom the court has reason to believe may have relevant information related to the expungement of the record.

(c) The Court shall order sealed all records in the petitioner's case in the custody of the court and any records in the custody of any other agency or official, if at the hearing the Court finds that:

(i) The subject of the hearing has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under this Title since the termination of the court's jurisdiction.

(ii) No proceeding concerning a felony or a misdemeanor involving moral turpitude or a petition under this Title is pending or being instituted against him; and

(iii) The rehabilitation of the person has been attained to the satisfaction of the court.

(d) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person and the court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

(e) Copies of the order shall be sent to each agency or official named therein.

(f) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records and only to those person named in such petition.

14.1.13.3 In any proceedings under this Title in which the court orders the petition dismissed, the court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the court's motion.

14.1.14 RIGHT OF APPEALS

Appeals will be dealt with pursuant to appellate procedures as provided herein.

CHAPTER 2

14.2.0 TEMPORARY CUSTODY, DETENTION AND SHELTER

14.2.1 TAKING CHILDREN INTO CUSTODY

14.2.1.1 A child may be taken into temporary custody by a law enforcement officer without order of the court:

(a) When he is abandoned, lost, or seriously endangered in his surroundings or seriously endangers others and immediate removal appears to be necessary for his protection or the protection of others; or

(b) When there are reasonable grounds to believe that he has run away or escaped from his parents, guardian, or legal custodian.

(c) When an Indian Child Welfare or Social Services Department worker reports a case and there is probable cause to believe that the child is in danger.

14.2.1.2 A Tribal Law Enforcement Officer accompanied by an employee of the Social Service Department or their designated representative may take a child into temporary custody:

(a) Under any of the circumstances stated in subsection 14.2.1.1 of this section: or,

(b) If he has violated the conditions of probation and he is under the continuing jurisdiction of the Children's Court.

14.2.1.3 The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

14.2.2 DUTY OF OFFICER-NOTIFICATION-RELEASE OR DETENTION-RECORDS

14.2.2.1 When a child is taken into temporary custody, the

officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him/her that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, an employee of the Social Service Department, or in whose physical custody the child is placed.

14.2.2.2 The child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court at a time set or to be set by the court.

14.2.2.3 Except as provided in paragraph (a) of this subsection, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, or other necessary information and to contact his parents, guardian, or legal custodian.

(a) If he is not released as provided in subsection 14.2.2.2, he shall be taken directly to the court or to the place of detention or shelter designated by the court without unnecessary delay.

14.2.2.4 The officer or other person who takes a child to a detention or shelter facility shall notify the court and any agency or persons so designated by the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the court and any agency or person so designated by the court stating the facts which led to the child being taken into custody and the reason why the child was not released.

14.2.2.5 The records of law enforcement officers concerning all children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

(a) When the child has escaped from an institution to which he has been committed.

(b) By order of the court.

14.2.2.6 No fingerprint, photograph, name, address, or other

information concerning identity of a child taken into temporary custody or issued a summons under the provision of this chapter may be transmitted to the Federal Bureau of investigation or any other person or agency except a local law enforcement agency and Social Service Department when necessary to assist in apprehension or to conduct a current investigation, or when the court orders the child to be held for criminal proceedings.

14.2.3. DETENTION AND SHELTER - HEARING - TIME LIMITS - RESTRICTION

14.2.3.2 A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility designated by the court or the Tribal Social Services Department and shall not be placed in detention.

14.2.3.2 When a child is placed in a detention facility or in a shelter facility designated by the court, the law enforcement official taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal guardian or if a parent or legal guardian cannot be located within the Tribe's jurisdiction, the person with whom the child has been residing, and inform him of the right to a prompt hearing to determine whether the child is to be detained further. The court shall hold such detention hearing within 48 hours, excluding Saturdays, Sundays and court holidays.

14.2.3.3 No child taken into custody pursuant to this Title shall be held longer than 48 hours, at which time the child may be released to the custody of parent, guardian, or legal custodian. If the child cannot be released to his parent, guardian, or legal custodian, he shall be released to a representative of the Tribal Social Services Department or, upon prior written or verbal approval of the court, a responsible adult. If the child is not released to his parents, guardian, or legal custodian, the court shall hold a detention hearing pursuant to subsection 14.2.3.2.

(a) Notwithstanding the provisions of subsection 14.2.3.2, a child who is alleged to be a runaway from another tribal facility or jail up to seven (7) days, at which time arrangement may be made for returning the child to his parent, guardian, or legal custodian.

(b) if it appears that any child being held in detention or shelter may be mentally ill as defined under this Title or developmentally disabled the court shall place the child in a designated facility approved by the court for a 72-hour treatment and evaluation.

14.2.3.4 The court may at any time order the release of any

child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the court at a time to be set by the court.

14.2.3.5 After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in detention or shelter care. When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care. When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care, it may authorize such treatment or care if the parent, guardian, or legal custodian are not immediately available.

14.2.4 TEMPORARY SHELTER - CHILD'S HOME

14.2.4.1 The court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the Tribal Social Services Department, which will have emergency caretaker services available, to remain in the child's home with the child until a parent, legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the Tribal Social Services Department, to resume charge of the child, but in no event shall such period of time exceed 72 hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Tribal Social Services Department, to resume charge of the child. The director of the Tribal Social Services Department shall designate in writing the representatives of these departments authorized to perform such duties.

14.2.5 SEARCH WARRANTS FOR THE PROTECTION OF CHILDREN

14.2.5.1 A search warrant may be issued by the Children's Court to search any place for the recovery of any child within the jurisdiction of the court believed to be a child in need of supervision, or a neglected and/or dependent child.

14.2.5.2 Such warrant shall be issued only on the condition that the application for warrant shall:

(a) Be in writing and supported by affidavit sworn to or affirmed before the court:

(b) Name and describe with particularity the child sought;

(c) State that the child is believed to be a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;

(d) State the address or legal description of the place to be searched.

(e) State the reasons why it is necessary to proceed pursuant to this section.

14.2.5.3 If the court is satisfied that grounds for the application exist of that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched.

14.2.5.4 The search warrant shall be directed to any officer authorized by law to execute it wherein the place to be searched is located.

14.2.5.5 The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.

14.2.5.6 The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.

14.2.5.7 A copy of the warrant, the application thereof, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

14.2.5.8 If the child is found, the child may be taken into custody in conformance with the provision of this Title.

14.2.5.9 The executed warrant shall be returned to the court.

CHAPTER 3: PETITION, ADJUDICATION, AND DISPOSITION

14.3.1 PETITION INITIATION - PRELIMINARY INVESTIGATION - INFORMAL ADJUSTMENT

14.3.1.1

(a) Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the tribal presenting officer who shall determine whether the

interests of the child or of the community require that further action be taken.

(b) If the tribal presenting officer determines that the interests of the child or of the community require that further action be taken, he may file a petition on a form specified which shall be accepted by the court.

(c) If the tribal presenting officer is unable to determine whether the interests of the child or of the tribe require that further action be taken from information available to him, he may refer the matter to the tribal social services department, or other agency designated by the court for a preliminary investigation and recommendations as to filing a petition or as to initiation an informal adjustment under subsection 14.3.1.3.

(i) Whether probable cause exists to believe the minor is a child in need of supervision or is a neglected child or a dependent child; and ,

(ii) Whether shelter care is necessary pending further proceedings.

14.3.1.2 Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, the law enforcement officer or other person may refer the matter to the court, which shall have a preliminary investigation made to determine whether the further action be taken, which investigation shall be made by the tribal social services department, or any other agency designated by the court.

On the basis of the preliminary investigation, the court may:

(a) Decide that no further action is required, either in the interests of the tribe or of the child;

(b) Authorize a petition to be filed; or

(c) Make whatever informal adjustment is practicable without a petition if:

(i) The facts are admitted and establish prima facie jurisdiction; except that such admission shall not be used in evidence if a petition is filed; and,

(ii) Written consent is obtained from the parents, guardian, or other legal custodian and also from the child, if of sufficient age and understanding.

14.3.1.3 Efforts to effect informal adjustment may extend no longer than six months. In any informal adjustment, the court or its designated agency shall , during the period of informal

adjustment, periodically counsel and guide the child and his parents, guardian, or legal custodian in a constructive manner designed to promote rehabilitation as well as requiring any one or more conditions of probation.

14.3.1.4

(a) Upon receipt of a report filed by a law enforcement agency, by an employee of a public or private school, or by a medical doctor, or any other person required to report pursuant to this Title indicating that a child has suffered abuse as defined herein and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report from any person other than those identified herein, the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.

14.3.2 PETITION FORM AND CONTENT

14.3.2.1 The petition and all subsequent court documents in any proceedings brought under this Title shall be entitled "The Hoopa Valley Tribe in the interest of, a child (or children) and concerning, Respondent". The petition shall be verified, and the statement in the petition may be made upon information and belief.

14.3.2.2 The petition shall set forth plainly the facts which bring the child within the court's jurisdiction. The petition shall also state the name, age, and resident of the child and the names and residences of the parents, guardian, or other legal custodian if known.

14.3.2.3 All petition filed alleging the dependency or neglect of a child shall include the following statement: "Termination of the parent/child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained." A separate hearing must be held before such termination is ordered. Termination of the parent/child legal relationship means that the child who is the subject of this petition would be eligible for adoption.

14.3.3 SUMMONS-ISSUANCE-CONTENTS-SERVICE

14.3.3.1 After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of the parent/child legal relationship is a possible remedy under the proceedings. Other

legal rights of the child, his parents or guardian, or any other respondent, at his own expense, to have an attorney present at the hearing on the petition. The court may appoint counsel for child.

14.3.3.2 No summons shall be issued to any respondent who appears voluntarily, or who waives service, or who has promised in writing to appear at the hearing, but any such person shall be provided with a copy of the petition and summons upon appearance.

14.3.3.3 The summons shall require the person or persons having the physical custody of the child to appear and to bring the child before the court at the time and place stated. If the person or persons so summoned are not the parents or guardian of the child, the summons shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for the hearing.

14.3.3.4 The court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his own behalf or on behalf of the child.

14.3.3.5 If it appears that the welfare of the child or of the tribe requires that the child be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

14.3.3.6 The court may authorize payment of necessary travel expenses incurred by persons required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the tribal court.

14.3.3.7 Summons shall be served personally, pursuant to the tribal rules of civil procedure. If personal service is effected not less than two days before the time fixed in the summons for the appearance of the person served; except that personal service shall be effected not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

14.3.3.8 If the parents, guardian, or other legal custodian of the child required to be summoned cannot be found within the tribal jurisdiction, the fact of the child's presence within the tribe's jurisdiction shall confer jurisdiction on the court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

(a) When the residence of the person to be served is outside the

Hoopla Reservation, a copy of the summons and petition shall be sent certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete within five (5) days after return of the requested receipt.

(b) When the person to be served has no residence within the Hoopa Reservation and his place of residence cannot be determined after due diligence, service may be by publication.

14.3.4 CONTEMPT-WARRANT

14.3.4.1 Any person summoned or required to appear who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

14.3.4.2 If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child.

14.3.4.3 When a parent or other person who signed a written promise to appear and bring the child to court who has waived or acknowledged service fails to appear with the child on the date set by the court, a bench warrant may be issued for the parent or other person, the child, or both.

14.3.5 APPOINTMENT OF GUARDIAN AD LITEM

14.3.5.1 The court may appoint a guardian ad litem to protect the interests of a child in proceedings when:

(a) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

(b) The court finds that there may be a conflict of interest between the child and his parent, guardian, or other custodian; or

(c) the court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

14.3.5.2 The court may appoint a guardian ad litem for any parent in proceedings who has been determined to be mentally ill by a court of competent jurisdiction or is developmentally disabled; except that if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be

informed that a guardian ad litem has been appointed.

14.3.5.3 At the time any child first appears in court, if it is determined that he has no guardian of his person, the court shall appoint a guardian of the person of the child before proceeding with the matter.

14.3.5.4 In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the powers and duties specified by the Court.

14.3.6 ADJUDICATORY HEARING-FINDINGS-ADJUDICATION

14.3.6.1 At the adjudicatory hearing, which shall be conducted as provided herein, the court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning children in need of supervision or by a dependent children; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

14.3.6.2 When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent. In such event, the court, on the motion of an interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(a) If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceedings.

(b) If it appears from the evidence that the child may be mentally ill or developmentally disabled the court shall proceed under section 14.3.7.

14.3.6.3 After making a finding but before making adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by the tribal social services department as the court may prescribe, if:

(a) Consent is given by the child and his parent, guardian, or other legal custodian after being fully informed by the court of

their rights in the proceedings, including their right to have an adjudication made either dismissing or sustaining the petition.

(b) Such continuation shall extend no longer than six months without review by the court. Upon review the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

14.3.7 MENTALLY ILL OR DEVELOPMENTALLY DISABLED CHILD - DEFINITIONS - PROCEDURE

14.3.7.1 Definitions:

(a) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, autism, or a neurological impairment, which may have originated during the first eighteen years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.

(b) "Mentally ill person" means a person who is of such mental condition that he is in need of medical supervision, treatment, care or restraint.

(c) "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he or she lacks sufficient control judgment and discretion to manage their property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protective supervision, guidance, training, control, or care.

14.3.7.2 If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, the court shall order that the child be placed in a hospital or other suitable facility for the purpose of examination for a period not to exceed 72 hours, excluding Saturdays, Sundays, and official holidays. A suitable facility for the purpose of examination shall be a facility designated by the court for 72 hour treatment and evaluation.

14.3.7.3 If the report of the examination made states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the court shall proceed as in any other tribal mental health commitment proceeding.

14.3.7.4 The court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

14.3.7.5 The court shall set a time for resuming the hearing on the original petition when:

(a) The report if the examination made states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required.

(b) The child is found not to be mentally ill.

(c) The report of the examination made states that the child is developmentally disabled but not mentally ill.

14.3.8 DISPOSITIONAL HEARING

14.3.8.1 After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interest of the child and the tribe. Such evidence shall include, but not necessarily be limited to, the social study and other reports.

14.3.8.2 The court may have the child examined by a physician, psychiatrist, or psychologist, and the court may place the child in a hospital or other suitable facility for this purpose.

14.3.8.3 The court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or for good cause on the motion of any interested party in any case where the termination of the parent/child relationship is a possible remedy.

(a) If the hearing is continued, the court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(b) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

14.3.9 ORDER OF PROTECTION

14.3.9.1 The court may make an order of protection in assistance of, or as a condition of, and decree of disposition authorized by this chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parents, guardian, or any other person who is a party to a proceeding.

14.3.9.2 The order of protection may require any such person:

- (a) To stay away from a child or his residence;
- (b) To permit a parent a visit a child at stated periods;
- (c) To abstain from offensive conduct against a child, his parents or parents, guardian, or any other person to whom legal custody of a child has been given;
- (d) To give proper attention to the care of the home;
- (e) To cooperate in good faith with an agency:
 - (i) which has been given legal custody of a child;
 - (ii) which is providing protective supervision of a child by court order; or
 - (iii) To which the child has been referred by the court.
- (f) To refrain from acts of commission or omission that tend to make a home an improper place for a child; or
- (g) To perform any legal obligation of support.

14.3.9.3 When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause.

14.3.9.4 After notice and opportunity for a hearing is given to a person subject to an order of protection, this order may be terminated, modified, or extended for a specified period of time if the court finds that the best interests of the child and the tribe will be served thereby.

14.3.9.5 A person failing to comply with an order of protection without good cause may be found in contempt of court.

14.3.10 NEGLECT OF DEPENDENT CHILD-DISPOSITION

14.3.10.1 When a child has been adjudicated to be neglected or dependent, the court shall enter a decree of disposition. When the decree does not terminate the parent/child legal relationship, it shall include one or more of the following provisions which the court finds appropriate.

(a) The court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the court may impose.

(b) The court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the court may impose.

(c) The court may place legal custody in the tribal social services department or a child placement agency for placement in a family care home, or other child care facility.

(d) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive special care and may place the child in a hospital or other suitable facility for such proposes.

14.3.10.2 The court may enter a decree terminating the parent/child legal relationship of one or both parents pursuant to this Title.

(a) Upon the entry of a decree terminating the parent/child legal relationship of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock and whose father does not acknowledge paternity, the court may:

(i) Vest the tribal social services department or child placement agency with the legal custody and guardianship of the person of a child for the purpose of placing the child for adoption; or

(ii) Make any other disposition provided in this section that the court finds appropriate.

(b) Upon the entry of a decree terminating the parent/child legal relationship of one parent, the court may:

(i) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(ii) Make any other disposition that the court finds appropriate.

14.3.10.3 When a child has been adjudicated neglected because he has been abandoned by his parent or parents, the court may enter a decree terminating the parent/child legal relationship if it finds:

(a) That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months

and during this period have not manifested to the to resume physical custody a firm intention to resume physical custody or to make a permanent legal arrangement for the care of the child; or

(b) That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety (90) days and that reasonable efforts to identify and locate the child has failed.

14.3.10.4 In placing the legal custody or guardian of the person of a child with an individual or a private agency. The court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

14.3.10.5 The court may grant a new hearing as provided herein.

14.3.11 CHILD IN NEED OF SUPERVISION-DISPOSITION

14.3.11.1 When a child has been adjudicated as being in need of supervision, the court shall enter a decree of disposition containing one or more of the following provisions which the court finds appropriate:

(a) The court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the court may impose.

(b) The court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

(i) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(ii) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel; and

(iii) The supervised work program assignment is made for a period of time consistent with the child's best interests, but not exceeding one hundred eighty (180) days.

(c) The court may place legal custody in the tribal social services department or a child placement agency for placement in a family care home or child care facility, or it may place the

child in a child care center.

(d) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he received other special care, and may place the child in a hospital or other suitable facility for such purposes.

(e) The court may require the child to pay for any damage done to persons or property, upon such conditions as the court may deem best, when such payment can be enforced without serious hardship or injustice to the child.

(f) The court may commit the child to an institution or group care facility designated by the court.

14.3.11.2 The court may grant a new hearing as provided herein.

14.3.12 COMMITMENT TO DESIGNATED INSTITUTION

14.3.12.1 When a child is committed to an institution designated by the court, the court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child. The designated institution shall provide the court with any information concerning a child committed to its care which the court at any time may require.

14.3.12.2 A commitment of a child to a designated institution shall be for an indeterminate period not to exceed two years. The tribal social services department may petition the committing court to extend the commitment for an additional period not to exceed two years. the petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the court shall granted or denied and shall notify all interested parties.

14.3.13 LEGAL CUSTODY-GUARDIANSHIP

14.3.13.1 Any individual, agency, or institution vested by the court with legal custody of a child shall have the rights and duties defined herein; except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the court.

14.3.13.2 If legal custody or guardianship of the person is vested in an agency or institution, the court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(a) An individual, agency, or institution having legal custody or guardianship of the person shall provide the court with any reports or other information concerning the care and treatment of the child at any time when required to do so by the court.

14.3.13.3 Any agency other than the social services department or institutions vested by the court with legal of a child shall have the right, subject to the approval of the court, to determine when and with whom the child shall live. No individual vested by the court with legal custody of a child shall remove the child from the state for more than thirty days without court approval.

14.3.13.4 A decree vesting legal custody of a child in an individual, institution, or agency other than the tribal social services department shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the court no later than six months after it is entered.

(a) The individual, institution, or agency vested with legal custody of a child may petition the court for renewal of the decree. The court, after notice and hearing, may determine, if it finds such renewal to be in the best interest of the child. The findings of the court and the supporting information shall be entered with the order renewing or denying renewal of the decree.

14.3.13.5 No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court if he so requests.

14.3.14 NEW HEARING AUTHORIZED

14.3.14.1 A parent, guardian, custodian, or next friend of any child adjudicated under this chapter, or any person affected by a decree in a proceeding under this chapter, or any person affected by a decree in a proceeding under this chapter, may petition the court for a new hearing on the following grounds:

(a) That new evidence, which was not known or could not with due diligence have been made available to the original hearing and which might affect the decree, has been discovered; or

(b) That irregularities in the proceedings prevented a fair hearing.

14.3.14.2 If it appears to the court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

14.3.15 CONTINUING JURISDICTION

Except as otherwise provided in this Title, the jurisdiction of the court over any child adjudicated as neglected or dependent or in need of supervision shall continue until he becomes eighteen years of age unless terminated by a court order.

14.3.16 ADULT CASES-PROCEEDINGS-PENALTY-SUSPENSION

Proceedings concerning any adult who is alleged to have induced, aided, or encouraged a child to violate any law, the penalty for which may be a jail sentence or court order shall be conducted according to tribal civil court rules or other appropriate court as designated by the tribal court.

CHAPTER 4: CHILD ABUSE

14.4.1 LEGISLATIVE PURPOSE

The Hoopa Valley Tribe hereby declares that the complete reporting of child abuse is a matter of tribal concern and that in enacting this chapter it is the intent of the tribe to protect the children of the tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the tribe that the various federal, state, and tribal medical, mental health, education, and social services agencies through cooperative participation in the child protection teams authorized to be created in this chapter.

14.4.2 DEFINITIONS

As used in this chapter unless the context otherwise requires.

14.4.2.1 "ABUSE" or "CHILD ABUSE OR NEGLECT" means an act or omission which seriously threatens the health or welfare of a child. It means a physical injury which is inflicted by other than accidental means on a child by another person. Child abuse also means the sexual assault or exploitation of a child; willful cruelty or unjustifiable punishment of a child; corporal punishment or injury; neglect of a child; abuse in out of home care; or emotional abuse of a child.

(a) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death as at variance with the degree or type of such condition or death, or circumstances indicate that such condition may not be the product of an accidental occurrence.

(b) Any case in which a child is subject to sexual assault, molestation, or exploitation as described herein:

(i) **"Sexual assault"** means conduct in violation of the following: rape, rape in concert, incest, sodomy, lewd or Lascivious acts upon a child, oral copulation, penetration of a genital or anal opening by a foreign object.

(ii) **"Sexual molestation"** means any indecent touching or acts designed to bring about a sexual response from a child.

(iii) **"Sexual exploitation"** means any acts involving a child for: employment of a minor to perform obscene acts; conduct involving matter depicting a minor engaged in obscene acts; preparing, selling, or distributing obscene matter involved in obscene acts; or prostitution.

(iv) These acts when committed by a person under the age of 18 who is either significantly older than the victim or in a position of power or control over another youth, may be considered sexual abuse.

(c) **"Willful cruelty or unjustifiable punishment of a child"** means a situation where any person willfully causes or permits any child to suffer, or inflicts hereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such a situation that his or her person or health is endangered.

(d) **"Corporal punishment or injury"** means a situation any person willfully inflicts upon the child any cruel or inhuman corporal punishment or injury resulting in a traumatic situation.

(e) **"Neglect"** means the negligent treatment or the maltreatment of a child by a person responsible for the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(i) Typical forms of neglect include: abandonment, lack of supervision, nutritional neglect, medical/dental or health neglect, educational neglect, inappropriate or insufficient clothing, shelter neglect, emotional neglect, and moral neglect, also includes continued infestation of head lice on person and in home.

(ii) **"General neglect"** means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

(iii) **"Severe neglect"** means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

(f) **"Abuse in out of home care"** means a situation of suspected physical/ mental injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or justifiable punishment of a child, as defined in this subsection, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) **"Emotional or mental abuse"** means injury to the intellectual or psychological capacity of the child as evidenced by an observable and substantial impairment in his ability to function within a normal range of performance and behavior, with due regard to his culture.

(h) In all cases, those investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a "reasonable" exercise of parental supervision.

14.4.2.2 "Child Protection Team" means a multidisciplinary team for the purposes of studying the public and private agencies responses to each report of child abuse and/or neglect as well as the team's recommendation related to public/agency response. The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

14.4.2.3 "Tribal Department" or "Tribal Child Welfare Department" shall mean the Tribal Social Services Department or Agency.

14.4.2.4 "Law Enforcement Agency" shall mean the Tribal Police Department or Tribal Law Enforcement Department, or the office of the county sheriff.

14.4.2.5 "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse and/or neglect" as defined in subsection (.1) of this section.

14.4.2.6 "Receiving Agency" means the Department or Law Enforcement Agency first receiving a report of alleged child abuse.

14.4.2.7 "Responsible Person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

14.4.2.8 "Unfounded Report" means any report pursuant to this chapter which is not supported by some credible evidence.

14.4.3 PERSONS REQUIRED TO REPORT CHILD ABUSE OR NEGLECT

14.4.3.1 Any person who has reasonable cause to suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonable result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Social Service Department or Tribal Law Enforcement Agency.

14.4.3.2 Persons required to report such abuse or neglect or circumstances or conditions shall include:

(a) Any physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse or licenses practical nurse, hospital/clinic personnel engaged in the admission, examination, care, or treatment of persons.

(b) Any mental health professional and personnel.

(c) Any school official or employee.

(d) Any child care custodian or worker in a child care center.

(e) Any social worker or worker in child protection capacity.

14.4.3.3 In addition to those persons specifically required by this section to report known or suspected child abuse or neglect, any other person may report known or suspected child abuse or neglect or circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal Law Enforcement Agency or the Tribal Child Social Services Agency.

14.4.3.4 The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making the report.

14.4.3.5 Any person who willfully violates the provision of this subsection may be subject to a civil penalty not to exceed five hundred dollars (\$500) or be liable for damages proximately caused thereby.

14.4.4 REQUIRED REPORT OF POSTMORTEM INVESTIGATION

14.4.4.1 Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the Tribal Law Enforcement Agency and the Social Service Department.

14.4.4.2 The Social Service Department shall forward a copy of such report of the central registry.

14.4.5 EVIDENCE OF ABUSE -- COLOR PHOTOGRAPH AND X-RAYS

14.4.5.1 Any child associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has been abused and/or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child.

14.4.5.2 Any color photographs or x-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

14.4.6 TEMPORARY PROTECTIVE CUSTODY

The judge of the tribal court shall be responsible for making available a person who may be a mediator or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the children's court to issue written or verbal temporary protective custody orders. These orders may be requested by the Social Service Department, a Tribal Law Enforcement Officer, an administrator of a hospital in which a child reasonably believed to have been abused and/or neglected is being treated, or any physician who has been abused and/or neglected, whether or not additional medical treatment is required, if the belief that circumstances or condition of a child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The Social Service Department shall be notified of such action immediately by the court appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody shall not exceed 72 hours notwithstanding any provision to the contrary.

14.4.7 REPORTING PROCEDURES

14.4.7.1 Reports of known or suspected child abuse or neglect made pursuant to this Title shall be made immediately to the Social Service Department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the Social Service Department.

14.4.7.2 Such reports, when possible shall include the following information:

- (a) The name, address, age, sex, and race (Tribal affiliation, if appropriate) of the child;
- (b) The name and address of the responsible person;
- (c) The nature and extent of the pending case, including any evidence of the child's injuries;
- (d) Dates and incidents of previous known or suspected abuse or neglect to the child or the child's siblings including number of previous reports of same or similar situations.
- (e) The name(s) and address of the person(s) responsible for the suspected abuse or neglect, if known;
- (f) The family composition;
- (g) The source of the report and the name, address, and occupation of the person making the report;
- (h) Any action taken by the reporting source; and
- (i) Any other information that the person making the report believes may be helpful in furthering the purpose of this chapter.

14.4.7.3 A Copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal Legal Department and to the Tribal Law Enforcement agency.

14.4.7.4 A written report from persons or officials required by this chapter to report known or suspected child abuse and/or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of section 14.4.1.

14.4.8 ACTION UPON RECEIPT OF REPORT

14.4.8.1 The Social Services Department shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.

14.4.8.2 The investigation, to the extent that it is reasonably possible, shall include:

- (a) The nature, extent, and cause of the abuse or neglect;
- (b) The identity of the person responsible for such abuse or neglect;
- (c) The names and conditions of any other children living in the same place;
- (d) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
- (e) All other data deemed pertinent.

14.4.8.3 The investigation shall, at a minimum, include a visit of the child's place of residence or place of custody and to the location of the alleged abuse and/or neglect and an interview with or observance of the child reportedly having been abuse and/or neglected. If admission to the child's place of residence cannot be obtained, the children's court, upon good cause shown, shall order the responsible person to allow the interview, examination, and investigation.

14.4.8.4

(a) The Tribal Social Services Department, except as provided in 14.4.8.5, shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse/neglect. It shall arrange for such investigation to be conducted by persons trained to conduct either the complete investigations or such parts thereof as may be assigned. The department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill.

(b) Upon receipt of a report, if the Social Service Department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of their report and his family and file a petition in the children's court on behalf of such child. If, before the investigation is completed, the opinion of the investigators is

that assistance of the Tribal Law Enforcement is necessary for the protection of the child or the other children under the same care, the Tribal Law Enforcement Agency shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody as provided in this Title.

14.4.8.5 If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Social Service Department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the department, it shall make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The Tribal Law Enforcement Agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Social Service Department.

14.4.9 DEVELOPMENT OF CHILD PROTECTION TEAM

It is the intent of this legislation to encourage participation between agencies impacting on child welfare matters by encouraging the creation of a child protection team.

14.4.9.1 The judge of the court shall have responsibility for inaugurating the child protection team.

14.4.9.2 The role of the child protection team shall be advisory only.

14.4.9.3 Development of roles and responsibilities shall also be decided by the judge of the court.

14.4.10 IMMUNITY FROM LIABILITY-PERSONS REPORTING

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Title, the taking of color photographs or x-rays, or the placing in temporary custody of a child pursuant to this chapter or otherwise performing his duties or acting pursuant to this article shall be immune from any liability, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or x-rays, and any person who has legal authority to place a child in protective custody, shall be presumed.

14.4.11 CHILD ABUSE AND CHILD NEGLECT DIVERSION PROGRAM

14.4.11.1 The tribal presenting officer, upon recommendation of the Social Service Department, may withhold filing a case against any person accused or suspected of child abuse and/or neglect and refer that person to a non-judicial source of treatment or assistance, upon conditions set forth by the Social Service Department. If a person is so diverted from the criminal justice system, the Tribal Presenting Officer shall not file charges in connection with the Social Service Department and the Tribal Presenting Officer in the diversion program offered.

14.4.11.2 The initial diversion shall be for a period not to exceed two years. This diversion period may be extended to one additional one year period by the Tribal Presenting Officer if necessary. Decisions regarding extending diversion time period shall be made following review of the person diverted by the Tribal Presenting Officer.

14.4.11.3 If the person diverted successfully completes the diversion program to the satisfaction of the Social Service Department, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

14.4.11.4 Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

14.4.12 EVIDENCE NOT PRIVILEGED

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this chapter.

14.4.13 COURT PROCEEDING-GUARDIAN AD LITEM

14.4.13.1 The Social Service Department or law enforcement agency receiving a report, in addition to taking such immediate steps pursuant to this Chapter, as may be required to protect a child, shall inform, within 72 hours, the children's court that the child appears to be within the court's jurisdiction. Upon receipt of such information, the court shall make an immediate investigation- to determine whether protection of the child from further abuse is required and upon such determination may authorize the filing of a petition.

14.4.13.2 In any proceeding initiated pursuant to this Chapter, the court shall name as respondents all persons alleged by the petition. In every such case, the responsible person shall be named as respondent. Summonses may be issued for all named respondents.

14.4.13.3 The court in every case filed under this section shall appoint, at no fee, a guardian ad litem at the first appearance of the case in court. The guardian ad litem shall be provided with all reports relevant to or by any agency or person pursuant to this chapter with reports of any examination of the responsible- person made pursuant to this section. The court or the Social Service Worker assigned to the case shall advise the guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross examine and cross examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

14.4.13.4 If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the court against the respondent.

14.4.14 CENTRAL REGISTRY

14.4.14.1 There shall be established a central registry of child protection in the Tribal Social Services Department for the purpose of maintaining a registry of information concerning each case of child abuse report under this chapter.

14.4.14.2 The central registry shall contain but shall not be limited to:

(a) All information in any written report received under this chapter;

(b) Record of the final disposition of the report, including services offered and services accepted;

(c) The plan for rehabilitative treatment;

(d) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;

(e) Any other information which might be helpful in furthering the purposes of this chapter.

14.4.14.3 The tribe shall appoint a person to act as director of the central registry and who shall have charge of said registry.

14.4.14.4 After a child who is the subject of a report reaches

the age of 18 years, access to his record shall be permitted only if a sibling or offspring of such child is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a Tribal Presenting Officer or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

14.4.14.5 Unless an investigation of a report conducted pursuant to this chapter determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation by the Social Service Department or the Tribal Law Enforcement Agency.

14.4.14.6 In all other cases, the record of the reports to the central registry shall be sealed no later than ten years after the child's 18th birthday. Once sealed the record shall not otherwise be available unless the director of central registry, pursuant to rules promulgated by the Tribe and upon notice to the subject of the report, gives his personal approval for an appropriate reason. IN any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

14.4.14.7 At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

14.4.14.8 Any time subsequent to the completion of the investigation , a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses or does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter. The

Social Service Department shall be given notice of the hearing. The burden in such a hearing shall be on the Tribal Department. In such a hearing shall be on the Tribal Department. IN such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

14.4.14.9 Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this chapter shall be given to the subject of such report and to the Tribal Department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

14.4.14.10 Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this chapter shall be subject to a civil penalty not in excess of five hundred dollars (\$500).

14.4.14.11 The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other tribes, states, and the National Center on child abuse and neglect.

14.4.15 CONFIDENTIALITY OF RECORDS

14.4.15.1 Except as provided herein, reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such report shall be confidential and shall not be public information.

14.4.15.2 Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, and the subject of the filing of a formal charge by a law enforcement agency.

14.4.15.3 Any person who violates any provision of this section shall be subject to a civil penalty of not more than five hundred dollars (\$500).

14.4.15.4 Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

(a) The law enforcement agency or department investigating a report of known or suspected child abuse and/or neglect or treating a child or family which is the subject of the report.

(b) A physician who has before him a child whom he reasonably suspects to be abused or neglected.

(c) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare.

(d) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem.

(e) A parent, guardian, legal custodian, or the other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons.

(f) A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) The central registry of child protection.

(h) All members of a child protection team.

(i) Such other persons as a court may determine, for good cause.

14.4.15.5 After a child who is the subject of a report to the central registry reaches the age of 18 years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (.4) of this section and is a suspected victim of child abuse and/or neglect. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person giving access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action or unless he is the subject of the report.

CHAPTER 5: TERMINATION OF PARENT/CHILD LEGAL RELATIONSHIP

14.5.1 DEFINITIONS

As used in this chapter, unless the context otherwise requires:

14.5.1.1 "Guardian ad litem" means a person who has been appointed to represent a child who is the subject of a written motion for the termination of the parent/child legal relationship.

14.5.1.2 "Termination of Parental Right" means a legal severance of the relationship between a parent and child. This severance relieves both the parent and the child from future obligations to one another.

14.5.2 MOTION FOR TERMINATION-SEPARATE HEARING-RIGHT TO COUNSEL-NO JURY TRIAL

14.5.2.1 Termination of a parent/child legal relationship shall be considered only after the filing of a written motion filed with the Children's Court, alleging the factual grounds for termination, and termination of a parent/child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing.

14.5.2.2 After a motion for termination of a parent/child legal relationship is filed pursuant to this chapter, the parent(s) shall be appointed in accordance with the provisions this Title.

14.5.2.3 An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement for the child is effected or until the court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

14.5.2.4 There shall be no right to a jury trial at proceedings held to consider the termination of a parent/child legal relationship.

14.5.3 NOTICE -- ABANDONMENT

Before a termination of the parent/child legal relationship based on abandonment can be ordered, the petitioner shall file and

affidavit stating what efforts have been made to locate the parent(s) of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

14.5.4 CRITERIA FOR TERMINATION

14.5.4.1 The court may order a termination of the parent/child legal relationship upon the finding of either of the following:

- (a) That the child has been abandoned by his parent(s) ; or
- (b) That the child is adjudicated dependent or neglected and all of the following exist:
 - (i) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent(s) or has not been successful.
 - (ii) That the parent is unfit.
 - (iii) That the conduct or condition of the parent(s) is unlikely to change within a reasonable time.

14.5.4.2 In determining unfitness, conduct, or condition, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent(s) unable or unwilling to give the child reasonable parental care. In making such determinations, the court shall consider, but not be limited to, the following:

- (a) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child.
- (b) Conduct towards the child of a physically or sexually abusive nature.
- (c) History of violent behavior.
- (d) A single incident of life-threatening or gravely disabling injury or disfigurement of the child.
- (e) Excessive use of intoxicating liquors or narcotics or dangerous drugs which affect the ability to care and provide for the child.
- (f) Neglect of the child.
- (g) Long term confinement of the parent.

(h) Injury or death of a sibling due to proven parental abuse or neglect.

(i) Reasonable efforts by child care agencies which have been unable to rehabilitate the parent(s).

14.5.4.3 In considering any of the factors for terminating the parent/child legal relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

14.5.5 REVIEW OF CHILD'S DISPOSITION FOLLOWING TERMINATION OF THE PARENT/CHILD LEGAL RELATIONSHIP

14.5.5.1 The court, at the conclusion of a hearing in which it ordered the termination of a parent/child legal relationship, shall order that a review hearing be held not later than ninety (90) days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the court, based upon an independent investigation, for the best disposition of the child.

14.5.5.2 If no adoption has taken place within a reasonable time and the court determines that adoption is not immediately feasible or appropriate, the court may order that provision be made immediately for long term foster placement of the child.

14.5.6 EXPERT TESTIMONY

14.5.6.1 Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the court's prior review and approval, shall be paid from the court funds.

14.5.6.2 All ordered evaluations shall be made available to counsel at least fifteen (15) days prior to the hearing.

14.5.7 EFFECT OF DECREE

14.5.7.1 An order for the termination of the parent/child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent, such child's right of inheritance shall be terminated only by a final decree of adoption.

14.5.7.2 No order or decree entered pursuant to this chapter shall disentitle a child to any benefit due him from any third person, including but not limited to, any Indian Tribe, any agency, any state, or the United States.

14.5.7.3 After the termination of a parent/child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

14.5.8 APPEALS

14.5.8.1 Appeals of court decrees made under this chapter shall be given precedence on the calendar of the Tribal Appellate Court over all matters unless provided by law.

14.5.8.2 Whenever an appeal is made under this chapter, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript to the tribal proceeding for the appeal at the expense of the tribe to be paid from the court fund.

14.5.8.3 Appeals will be dealt with in the same manner as appeals in the Tribal Civil Court, except as provided 14.8.1.

CHAPTER 6: ADOPTION

14.6.1 JURISDICTION

The Hoopa Tribal Children's Court shall have jurisdiction in any adoption proceeding involving a member or Indian Child.

14.6.1.2 Any child under the age of 18 years may be adopted by any adult person pursuant to this chapter. The person adopting the child must be at least 10 years older than the person adopted unless good cause is shown why this requirement should be waived.

14.6.1.3 CONSENT

The consent of the child, if over the age of 12 years is necessary to its adoption.

14.6.1.4 A child cannot be adopted without the consent of the parents, if living, provided that in the following cases consent shall not be necessary:

(a) From any parent who has been judicially deprived of the custody of the child, provided any such adjudication shall be

final on appeal or the time for such appeal shall have expired;
or

(b) From any parent who has been judged by a court to be mentally incompetent.

14.6.1.5 A married man or woman cannot adopt a person without the consent of his or her spouse, providing the spouse is capable of giving such consent.

14.6.1.6 The proven father of a child born to a woman who is not married shall have rights to service of process in adoption, delinquency, dependency, or termination of parental rights proceedings, provided that he has, prior to the entry of the final order in any of the proceedings, acknowledged the child as his own by affirmatively asserting paternity within 60 days after the birth of the child or after being informed that the child is his:

(a) By Tribal Diagnostic Blood Testing in compliance with Tribal Enrollment Ordinance.

(b) By publicly acknowledging it as his own, receiving it into his family, and treating it as if it were his child.

(c) By causing his name to be affixed to the birth certificate.

(d) By commencing a judicial proceeding claiming a parental right.

14.6.1.7 The adoption of two or more children by the same adopting parent(s) may be included in one proceeding, provided that a separate order of adoption shall be made and filed by the court as to each child adopted.

14.6.1.8 No petition for adoption shall be granted until the child shall have lived within the proposed adoptive home for a period of at least six months before or after the filing of the petition.

14.6.1.9 The petition filed shall be sworn by the person or persons requesting adoption and shall state the:

(a) Name, address, residence, social security number, birth date, and race (Tribal Affiliation, if necessary or applicable) of the person or persons requesting adoption;

(b) Name, address, birthrate, race and residence of the person(s) to be adopted;

(c) Length of time that the person to be adopted has been in the

proposed adopted home;

(d) Name, address, residence, birthdate, and race, if known, of the legal mother and father of the child to be adopted;

(e) Facts describing under what circumstances the person to be adopted began residing in the proposed adoptive home, including whether or not one or both legal parents have consented to that arrangement and to the proposed adoption or whether the consent of one or both of the parents is not required by the provisions of this chapter, and whether or not the father of the child is entitled to service of process'

(f) A full description and statement of value of all property owned or possessed by the person to be adopted; and

(g) Relief requested.

14.6.1.10 Whenever a person petitions the Hoopa Tribal Children's Court for and order adopting a minor child the judge of the Children's Court shall fix a time for a hearing and shall request the Tribal Social Services Department to make a careful and thorough investigation of the matter and report his findings including a recommendation as to whether or not the adoption should or should not be granted, in writing to the court.

14.6.1.11 Upon filing a petition for the adoption of a minor child the court shall notify the Tribal Social Services Department by mailing to the office a copy of the said petition, or mail to the office a copy of the order fixing the date of such hearing. The Tribal Presenting Official shall make recommendations-

as to the desirability of the adoption. The office may appear in any such procedure the same as the part in interest, and may request a postponement of hearing on the petition in event more time is needed for its investigation.

14.6.1.12 A copy of the petition for adoption and order for hearing shall be personally served upon the legal or natural mother and father of the child to be adopted; provided however, that service may not be required if otherwise excused under this chapter. The petition and order shall be accompanied by a notice that adoption of their child is requested, that if granted their parental rights in said child will be terminated, of the time and place of hearing, and that they may attend the hearing and show cause why the adoption should not be granted if said cause exists. Proof of service required shall be made to appear by affidavit or oral testimony.

14.6.1.13 At the time of the hearing on the petition for adoption, the person adopting a child, the child adopted, the

natural mother and father of the adopted child, and any spouse of any person adopting any child must appear before the court. The spouse of the person adopting the child must execute a consent to the adoption. Any person except the adoptive child and the person adopting may enter their consent through a power of attorney.

14.6.1.14 Any person or entity who has been given custody of any child after the rights of the natural parents have been terminated may consent to the adoption of the child surrendered to it if permission to do so has been given by the court.

14.6.1.15 At the time of the hearing on the petition for adoption, and agreement must be executed that the child adopted shall be treated in all respects as his, her, or their natural and lawful child would be treated.

14.6.1.16 The court shall enter finding of fact and conclusions of law when testimony is presented establishing any facts relevant to any point.

14.6.1.17 Notwithstanding any other provision of this chapter, the court shall, if the child to be adopted is Indian, satisfy itself and make a finding reflected in either findings of fact and conclusions of law and order of adoption that such adoption will not be harmful to the cultural interests of the child.

14.6.1.18 The judge must examine all persons appearing separately and if satisfied from such examination and the report of the investigation that the child is suitable for adoption and the petitioning parent or parents financially and morally fit to have the care and training of such child, that all requirements of law have been met and that the interest of the child will be promoted by the adoption, he must make an order declaring that the child thenceforth shall be regarded and treated in all respects as the child of such person; and which order, among other things, shall contain the following:

(a) The full adoptive name, date of birth, sex, color or race, and place of birth of the adoptive child; and

(b) The full name, date of birth, citizenship, residence, color or race, birthplace, and occupation of both adoptive parents.

14.6.1.19 The files and records of the court in adoption proceedings shall not be open to inspection or copy by persons other than the parents by adoption and their attorneys, representatives of the Bureau of Indian Affairs, Sacramento, or the Tribal Social Services Department, and the child when he reaches the age of maturity, except upon the order of the court expressly permitting inspection or copy. No person having charge of any birth or adoption records shall disclose the names of any

parents, or parents by adoption, or any other matter, appearing in such records, except upon order of the Hoopa Tribal Children's Court.

14.6.1.20 A child, when adopted, may take the family name of the person adopting and after adoption the two shall sustain toward each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation.

14.6.1.21 The natural parents of an adopted child are from the time of the adoption relieved of all parental duties towards, and of all responsibilities for the child-so-adopted, and have no right over it, except in cases where a natural parent consents to the adoption of his or her child by the child's stepfather or stepmother who is the present spouse of the natural parent.

14.6.1.22 An adopted child will retain full inheritance rights from his natural parent or parents.

14.6.1.23 The fact of adoption shall not in any manner whatsoever affect the adoptive child's qualification and right to be enrolled in Hoopa Valley Tribe of California.

14.6.1.24 The order of preference for adoptions under this Title, regardless of residence, shall be:

1. Extended Family;
2. Tribal Member;
3. Other Indian;
4. Non-Indian.

CHAPTER 7: FOSTER HOME STANDARDS

14.7.1 PURPOSE

14.7.1.1 The purpose and intent of these foster care standards are in accordance with both the Federal Indian Child Welfare Act (P.L. 95-608) and the California State Department of Social Services in reference to Information Release No. 40-80. Both recognize the need and desirability of Indian Tribes to establish and regulate foster homes for Indian children.

14.7.1.2 These standards are to insure continuity of the child's culture, spiritual values, and family and extended family ties, while providing for the establishment of services which meet the individual needs of the child. These standards are apperceptive and responsive to the rights of the Hoopa Valley Tribe of California.

14.7.2 TRIBAL AUTHORITY TO LICENSE FOSTER HOMES

The authority of the court to issue license shall be pursuant to this Title and the provisions adopted under.

14.7.3 DEFINITIONS

14.7.3.1 "Indian Family" means a family in which at least one head of the household is a member of and Indian Tribe or is eligible for membership in a tribe.

14.7.3.2 "Indian Child" means an unmarried person under eighteen years who is a member, or is a direct descendent of an enrolled member of the Hoopa Valley Tribe.

14.7.3.3 "Member Child" means a child who is a direct descendent of an enrolled member of the Hoopa Valley Tribe.

14.7.3.4 "Foster Child" means an Indian child placed for foster care through a tribal agency by the authority of the state or Tribal Court, parent, guardian, or custodian.

14.7.3.5 "Extended Family" means any person related by blood.

14.7.4 FOSTER CARE LICENSING PROCEDURES

14.7.4.1 ELIGIBILITY FOR FOSTER CARE LICENSING

Any Indian Family living within or near the area served by the Tribal Social Services Department may apply for certification as a foster family home for Tribal Children.

14.7.4.2 FOSTER HOME ASSESSMENT

A foster home assessment or study will be made in accordance with the established procedures of the tribal social services department to determine if the applicants meet the foster home standards as established herein.

14.7.4.3 FOSTER CARE LICENSE

Once a home study is completed and the applicant's home is determined to meet the foster home licensing standards, a foster care license will be granted to the applicants. The Tribal Court shall have exclusive authority to issue foster license under this Title.

14.7.4.4 REFUSAL TO LICENSE AND/OR ISSUANCE OF A PROVISIONAL LICENSE

(a) The Tribal Court may refuse to license a home. The refusal must be based on an assessment showing that the applicant does not meet the foster home standards. Applicants may reapply,

showing that the necessary changes have been made, and they may be reconsidered. An applicant may be granted a provisional license pending implementation of the recommended changes.

(b) The applicant has primary responsibility for corrections necessary to fulfill the necessary standards for a foster care license.

14.7.4.5 FOSTER CARE LICENSE RENEWAL

(A) Foster care license renewal will on an annual basis.

(B) Renewal of licenses will be based on the approval of the Tribal Court dependent upon an evaluation conducted by the Social Services Department of the foster family and its care of children during the past year.

(C) A medical report will be necessary.

14.7.4.6 FOSTER CARE PAYMENTS

Foster care payments, if any, will be made in accordance with the foster care agreement made between the Tribal Court and the foster family at the time the child is placed in foster care. Members of an extended family may be eligible to receive payment for foster care in accordance with the foster care agreement.

14.7.4.7 REVOCATION OF FOSTER CARE, PROVISIONAL OR SPECIAL LICENSE

A license may be revoked by the Tribal Court. Standard of revoking a license must be that continued custody of their child by the foster parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Evidence must be supported " beyond a reasonable doubt " including testimony of a " qualified earnest witness."

14.7.4.8 FOSTER CARE LICENSING RECORDS

Records shall be maintained on each foster family. These records shall include pertinent information gathered during the foster care application and assessment process, a record of foster children placed in the home, foster care licensing reviews, and current license status. The records to be maintained by the Tribal Social Services Department.

14.7.5 FOSTER CARE PLACEMENT PROCEDURES

14.7.5.1 FOSTER CARE PLACEMENT AUTHORITY

Authority to place an Indian Child can be granted to the Tribal Court by any of the following:

- (a) A state court having jurisdiction;
- (b) A Tribal Court having jurisdiction;
- (c) The child's parent having custody and making voluntary consent for placement; or
- (d) A legal guardian or Indian Custodian, other than a parent making voluntary consent for placement.

14.7.5.2 PROVISION FOR MEDICAL CARE

The foster care agreement shall include a provision granting the Tribal Social Services Department the authority to consent of routine and emergency medical and dental care and treatment, including emergency surgery, for the child.

14.7.5.3 FOSTER CARE CASE PLAN

At the time of placement, a case plan will be developed by the Tribal Social Services Department for each child placed in foster care by the department. The participation of the child and his family will be sought in developing the case plan, when appropriate. The case plan shall include a " permanency plan " for the child in order to provide a designed program to develop a long-term situation for the child, the first option being his return to the parents, the second option being relative placement, the third option being the child's adoption, and the fourth option being long-term foster care.

14.7.5.4 FOSTER CARE REVIEW

A case review shall be made at least every six months for every Indian Child placed in foster care by the Tribal Court. The child, the child's parents or custodians, the foster family, and the social worker are to participate in the foster care review, if at all possible. The foster care review shall include the following:

- (a) Assessment of the child's development and progress.
- (b) Assessment of the development and progress of the child's family.
- (c) Assessment of the child's relationship with his parents or custodians.
- (d) Assessment of the child's relationship with the foster family.
- (e) Review of the foster care case plan.

14.7.5.5 FOSTER CARE AGREEMENT

Upon placement of an Indian Child in foster care, the Tribal Court and the foster parent(s) shall acknowledge the following:

- (a) The rights and responsibilities of the foster child.
- (b) The rights and responsibilities of the Tribal Social Services Department.
- (c) The rights and responsibilities of the foster parents.
- (d) The rights and responsibilities of the child's parent(s) or custodians.
- (e) The amount and manner, if any, of foster care payment.

14.7.5.6 FOSTER CARE PLACEMENT RECORDS

All pertinent foster care placement records shall be maintained, with provisions for insuring confidentiality. These records shall include the following:

- (a) Case plans and reviews.
- (b) Case summaries, reports, and narratives.
- (c) Court orders.
- (d) Medical and dental records.
- (e) Any other salient information.

14.7.6 FOSTER HOME STANDARDS

14.7.6.1 FOSTER FAMILY

(a) HEALTH: Each member of the foster family household, and any person who assists with the care and supervision of Indian Foster Children, shall be in good health and have had a physical examination within a year of the date of application for foster care license. The physician's report of the foster care applicant shall be completed and signed by a licensed physician, stating that the applying family is in good health and free from any physical or mental illness which might be detrimental to a foster child. A medical statement shall be completed and signed by a licensed physician which states that any other members of the household are free from communicable and contagious diseases and have no health condition which would be detrimental to foster children.

(i) Physical handicaps of foster parent's shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect and individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

(b) PERSONAL QUALITIES: Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character.

(i) Relationships within the family shall be such that a wholesome atmosphere for growth of the foster child will be assured. No family member or household occupant shall have a record of child abuse, felony, or demeanor involving moral turpitude.

(c) AGE: The biological age of a foster parent should be considered in relation to physical condition, vitality, flexibility, maturity, and ability to exercise appropriate authority, supervision, and physical care for specific children. No restriction is placed on upper age levels, but an older foster parent must have the physical and emotional stamina to deal with the guidance, care, and protection of children.

(d) INCOME: The foster family shall have sufficient income to meet the family's basic needs. This will allow payments, if any, for foster care to meet the basic needs of the foster child.

(i) At this time the department does not have a plan for paying foster families a salary. If the foster family wishes to receive payment for foster care services, it will have to be worked out through either a Tribal/ State agreement or use of California State Department of Social Services Standards for Foster Family Homes.

(e) EMPLOYMENT: Education, and/or training pursuits of foster parents are evaluated in regard to the ages and needs of the child(ren) for whom they wish to provide care. When both parents in a two-parent home and when single parents are employed, suitable plans for day care and/or supervision of the child after school and during the summer while parents are at work must be approved by the Tribal Court.

(f) PARENTING ABILITIES: Foster parents' motivation for application should be examined. Attitudes of significant members of the extended family regarding child placement capacity to provide for the foster child's needs while giving proper consideration to their own children and should have a realistic assessment of the positive and negative aspects of foster parenthood, including acceptance of the temporary nature of

foster care.

(i) When necessary, foster parents should have special ability to care for children with special needs (physical handicaps, emotional disturbances, etc.)

(ii) Foster parents should have the ability to administer discipline in a manner appropriate to the age and development of the child. Although families differ in their approach to discipline, harsh or threatening methods are particularly damaging to children in foster care. Discipline should be defined as an overall plan for teaching acceptable behavior, punishment is, more narrowly, negative reinforcement for unacceptable behavior.

(g) BOARDERS: a Tribal Foster Home may not have adult roomers or boarders unrelated to the foster parents without special permission of the Tribal Court. The foster parents shall keep the social services department informed about all persons living in the home, and all others having regular contact with the foster home.

(h) FAMILY COMPOSITION: The composition of the foster family will have taken into account in assessing whether the child's needs will be met by such a placement. The presence of other children in the home, either the foster parent's or foster family's, related or unrelated adults, shall be taken into account as they may be affected by, or have an affect upon the foster child or children.

(i) REFERENCES: The foster family shall provide name sand addresses of those references (non-related) who can attest to the family's, qualifications to become foster parents.

(j) RELATIONSHIP WITH TRIBAL SOCIAL SERVICES DEPARTMENT: Foster parents should be able to work with the tribal social services department in making plans for the foster child and meeting his needs.

Foster parents should be willing to discuss problems and questions with the tribal social services department. They should be willing to accept the policies of the tribe.

Foster parents must be willing to sign and abide by the terms of the tribal foster care agreement. Foster parents must be willing to have a tribal social services worker visit the home at least once every six months, and at any time a special problem involving the child or his family arise, and at any other reasonable time.

14.7.6.2 FOSTER HOME

(a) SAFETY: The house and premises shall be reasonably clean. The physical facilities of the home must present no hazards to the safety of the foster child. the foster family must have access to emergency services in case of crisis.

(b) LOCATION: The location should be such that the foster parent is able to arrange transportation to school, church, recreational activities, and other resources as needed.

(c) SLEEPING ARRANGEMENT/PERSONAL SPACE: the foster child shall be provided adequate and appropriate sleeping space, consistent with his needs for privacy or personal contact space shall be provided for the child's personal possessions.

Separate sleeping areas must be provided for children over age six who are of the opposite sex. The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster child(ren) who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior.

Children, other than infants and during emergencies such as illness, shall not share sleeping quarters with adults in the household.

In all instances when exceptions are necessary, these shall be for children under two years of age or when special cultural, ethnic, or socioeconomic circumstances create a situation in which such exceptions will not be the detriment of the child.

(d) STANDARD OF LIVING: Physical standards for the foster home shall be set according to individual living standards for the community in which the foster home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.

(e) PLAY SAFE: Play space, fenced if necessary, shall be available and free from hazards which might be dangerous to the life and health of the child.

14.7.6.3 FOSTER CHILD

(a) DAILY ROUTINE: A daily routine shall be such as to promote good health, rest, play habits, and positive growth.

(b) RESOURCES: The foster family must demonstrate a willingness to cooperate with available resources for the foster child.

(c) RELIGION: Opportunities for satisfying religious and spiritual experience are provided the child through an appropriate religious affiliation which does not conflict with

the broad religious preference of the child and his family.

(d) NUTRITION: A balanced and ample diet adjusted to the age, special needs, and physical development of the foster child shall be provided.

The foster child shall not be deprived of a meal or of eating with the family as a disciplinary measure.

(e) CONFIDENTIALITY: The foster family must demonstrate the ability to maintain confidentiality as it relates to the foster child and his biological family.

At no time is the biological family to be denigrated or otherwise put down to the foster child or in the presence of the foster child.

(f) CULTURAL HERITAGE: The foster family must demonstrate a willingness to show respect for the child's individual cultural heritage.

(g) DISCIPLINE: The foster family understands that discipline is a method of teaching not of punishing. Effective non-physical methods of discipline are used in a manner consistent with the child's age and development.

14.7.7 GUIDELINES FOR ASSESSING FOSTER FAMILY APPLICANTS

14.7.7.1 PURPOSE

The guidelines are for the purpose of the study and evaluation of foster family applicants. After modification and adaptation to reflect community standards and traditions, such guidelines will help to:

1. Determine if the family and home meet the basic requirements of the Tribal Social Services Department and the Tribal Children's Court.
2. To fulfill the legal and moral responsibilities of these entities in protecting the physical, mental, and emotional well being of the child.
3. Assess the foster parenting abilities of the applicants.
4. Learn enough about the applicants to determine what kind of child they can best serve.
5. Assist applicants in understanding the responsibilities involved and decide if they wish to participate.
6. To prepare potential foster parents to deal with the special

needs of foster children.

These guidelines will assist the worker in evaluating the applicants and their home. The study includes but does not have to be limited to the following areas. Although it is not necessary to adhere strictly to the sequence of the following guidelines, the areas are basic and should be included in the applicant study--the extent of each depending upon applicability to the potential foster family situation.

14.7.7.2 BASIC REQUIREMENTS OF FOSTER PARENTS

Desirable personal qualities of those who wish to serve as foster parents are:

- (a) Evidence of an interest in and responsiveness to other people--particularly children.
- (b) Capacity to give love, affection, and understanding to a child without undue expectation for gratification from such care, and to endure the frustrations inherent in the care of such children.
- (c) Ability to share with each other in the care of foster children.
- (d) Provision of proper consideration to their own children's feelings and the feelings of close relatives towards a foster child.
- (e) Maintenance of stable and satisfactory relationships (marital, parent/child, etc.), realizing that family problems may affect foster children differently from their own children.
- (f) Evidence of emotional stability and ability to function adequately in relation to family responsibilities and employment.
- (g) Ability to administer discipline in a manner appropriate to the age and development of the child.
- (h) Reputable character, values, and ethical standards conducive to the well-being of children.
- (i) Practical understanding of the developmental stages of children and their accompanying needs.
- (j) Ability to accept a foster child's relationship with his/her natural parents, including neglectful and abusive parents.
- (k) Capacity to help prepare the children for his/her return home or for adoptive placement.

(1) Ability to accept that children placed for foster care are placed for their foster care only and not for adoption purposes.

14.7.7.3 FOSTER PARENTS RELATIONSHIP WITH TRIBAL SOCIAL SERVICES DEPARTMENT

The family reflects an ability to work constructively with the Tribal Social Services Department.

(a) In developing plans and meeting the needs of the foster child and his/her family.

(b) By accepting consultation and training.

(c) By maintaining confidentiality.

(d) By working within the department's policies.

14.7.7.4 FAMILY INTEREST AND MOTIVATION

A family's motivation for wanting a foster child may be based on reasons which are not recognized or verbalized. Circumstances which promoted the family to apply at the particular time of their application can help clarify these reasons. The source of information about the foster family program as set up by the social services department may turn out to be the key to their decision.

During the process of the study and evaluation of the family, underlying needs of the family not previously stated or recognized may be revealed and should be assessed realistically and honestly with the family. Specific discussion of the difference between a foster family home and an adoptive home is necessary to determine whether the applicants realistically accept the difference.

14.7.7.5 PERSONAL INFORMATION OF FOSTER PARENTS (AND ANY OTHER ADULT IN THE HOME)

Knowledge of past experience and influences are vital in understanding the adult's current functioning not only as individuals, but also as members of a family. Significant areas of study are:

(a) Personality and attitudes of the applicant. What is the person like as an individual?

(b) Childhood relationships with parents, siblings, relatives, or other meaningful person. What were their childhood and growing up like?

(c) Experiences such as death, illness, divorce, poverty, etc.,

which had an impact on the person's attitudes, feelings, expectations, etc.

(d) Concepts of appropriate discipline and manner in which it should be administered.

(e) Education and training and what it means to the person.

(f) General physical and emotional health of members of the household as evidenced by an examination report from a physician must be obtained for each member of the household.

(g) If a physical handicap exists, how does it affect ability to function as a parent in providing adequate care and supervision.

(h) Any specific medical or emotional condition existent in members of the household? Is any member of the household under professional care for any condition which requires the use of prescribed drugs and/or narcotics, and if so, to what extent?

(i) If any member of the household previously received psychiatric or psychological counseling, explore the circumstances and results.

(j) Physical description, with any notable abnormalities described in detail.

(k) Employment record with respect to stability or work and satisfaction derived from employment.

(l) Social relationships within the community, hobbies, skills, talents, special interests, etc.

(m) Religious influences, affiliations, and activities.

(n) Reaction to stressful situations.

(o) Current relationships within the family including marital and parent/child relationships.

(p) Special training, ability, or experience in working with or caring for children with special needs such as physical handicaps, mental retardation, behavioral problems, emotional disturbances, etc.

(q) Further exploration or explanation of any arrests for or conviction of any criminal action, including status of parole or probation.

14.7.7.6 PERSONAL INFORMATION OF CHILDREN IN THE HOME

Describe children as to:

- (a) Age and physical appearance.
- (b) Personality, interests, skills, etc.
- (c) Strengths and/or problems in parent/child relationships, school adjustment, behavior and health.
- (d) Ability to get along with other and children and depending on age, attitude towards foster children.

14.7.7.7 DISCIPLINE

Effective and constructive discipline includes diversion, separation from problem situation, deprivation of privileges, praise for appropriate behavior, and gentle physical restraint such as holding. The use of the open hand to lightly swat the child's buttocks or hands could be considered non-physical discipline and used only when necessary to protect the child's safety and well-being. In no instance is any object to be used to discipline a foster child.

Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or cultural background is not used or permitted. Deprivation of meals is not used as discipline. No child is shaken, pinched, or roughly jerked by a family member or any other person in the home.

Discuss the applicant's understanding and acceptance of the policy on discipline and include this in the written report. Is there mutual agreement between the foster parents on methods of discipline? Discuss the manner in which they discipline their natural children, if any. If not covered in any other section of this study, review types of discipline used by the applicant's parents or caretakers and any effect this has had on their attitudes.

14.7.7.8 MARITAL STATUS AND BACKGROUND

Discuss the applicants current marital status as to length of marriage, stability, and method of resolution of any problems. If applicable, discuss any previous marriages as to cause of divorce, children involved, and if so, visitation arrangements.

14.7.7.9 INCOME AND MONEY MANAGEMENT

Discuss the family's method of managing financial resources and obligations. Does the family function without undue problems, and independent of foster child care payments. Factors to consider are net income including salary and any income from other sources, any debts, child support obligations, etc.

14.7.7.10 HOME AND LIVING STANDARDS

Include a concise but complete description of the home and the neighborhood. Be specific as to:

- (a) Cleanliness and appearance of home and yard.
- (b) Sleeping arrangements for foster children.
- (c) Sanitary facilities if not on public system (i.e., toilet and bathing, water supply, garbage and sewage disposal).
- (d) Safety factors (particularly relating to preschool or handicapped children) such as guards and rails on stairways, heating facilities and outdoor play area protected from traffic hazards.

14.7.7.11 REFERENCES

A minimum of three (3) references are personally, contacted, either by the person conducting the home evaluation or by a contracted agency at sites remote from jurisdictional area (at written request of social services department). In the event out of state references are given, written correspondence and replies are acceptable as valid references to supplement those provided locally. If the applicant has served as a foster parent for another agency or institution, a written release of information is obtained to gather information from the former agency, and this information is reviewed in relation to the family's current request.

Persons familiar with the family from a variety of perspectives who can provide a well-rounded picture of the family's functioning and character are sought. These might include friends with whom the family shares an ongoing social relationship, and whose children socialize and visit in the home of the applicants with their children. Neighbors acquainted with the family and their children. Neighbors acquainted with the family and their activities, employers and/or coworkers, relatives, ministers, and others knowledgeable of the family on a personal basis as to habits, interests, values, and child rearing practices should be sought.

14.7.7.12 TEAMWORK AND SUPERVISION

The study is to include a summation of the social worker's explanation and the foster parent applicant's understanding of:

- (a) The fundamental responsibility of the social services department in meeting the physical, emotional, and medical needs of the child in care.
- (b) The responsibility of the foster parent for the child's

daily care so that all three areas of need (physical, emotional, and medical) are met.

(c) The social worker's primary responsibility as the liaison in all planning among the child, the natural family, the foster family, the social services department, and the children's court.

(d) Kinds of parental situations necessitating placement.

(e) Varying lengths of time for which children require placement.

(f) Characteristics of children requiring placement and problems associated with being a foster child.

(g) Differences between foster family care and adoption.

(h) Policies and procedures regarding payment (if any), provision of clothing, medical care, discipline, confidentiality, education, religious training, etc.

14.7.7.13 RECOMMENDATIONS

As a result of the study process, recommendation is made as to whether or not the applicant meets standards for providing foster family care. Included in the final assessment are:

(a) The applicant's understanding and acceptance of the purpose of foster care and willingness to cooperate in adhering to agency policies.

(b) Areas in which the applicants show special strength and those in which they will need help and training.

(c) A delineation of the number, age range, sex, and special areas of needs of children for whom the applicant, if approved as meeting standards, is qualified to provide care.

(d) If it is determined that the applicants do not meet standards for foster parenthood, a detailed analysis of the basis for the decision is made.

(e) Personal contact with the applicants to notify them of the decision regarding approval or disapproval of the application, followed by written notification.

(f) The effective date for opening the foster home, showing it as not meeting standards, or a cancellation of the application.

14.7.7.14 EVALUATION

The six-month evaluation of a new foster home and the annual re-evaluation thereafter is a comprehensive appraisal of the foster

family's functioning. The evaluation consists of the foster home, in which an assessment is made on the manner in which the foster parents were able to meet the needs of the various children placed in their home. The successful and/or ineffective means used by the foster parents in caring for and directing the child enables the social services department to determine what type of child the foster parent can best serve. Areas in which the foster parents need additional help from the social worker and/or social services department to strengthen their parenting ability are recorded.

All changes in the physical arrangements and in the foster parents' capacities for child caring since the original study are included in the re-evaluation.

CHAPTER 8

14.8. PERSONAL RIGHTS OF CHILDREN IF FOSTER CARE

Each child shall have personal rights which include but are not limited to:

14.8.1 To be accorded dignity in his/her personal relationships with other persons in the home.

14.8.2 To be accorded safe, healthful and comfortable accommodations, furnishings and equipment that are appropriate to his/her needs.

14.8.3 To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature including but not limited to interference with the daily living functions of eating, sleeping, or toileting, or withholding of shelter, clothing, or aids to physical functioning.

14.8.4 To be informed and to have his/her authorized representative informed by the foster parent(s) of the provisions of law regarding complaints, including but not limited to the address and telephone number of the complaint receiving unit of the licensing agency and of information regarding the confidential registration of complaints.

14.8.5 To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisors of his/her choice.

14.8.6 Not to be locked in any room, building, or facility premises by day or night.

14.8.6.1 This does not prohibit the home from being secured by

locking exterior doors and windows or from establishing house rules for the protection of the children so long as the children can exit from the home.

14.8.7 Not to be placed in any restraint device except a supportive restraint approved in advance by the licensing agency.

14.8.7.1 Supportive restraint shall be limited to appliances or devices to prevent falling and shall be fastened or tied in a manner which permits quick release. This includes car seats.

14.8.8 To be free of the administration of medication or chemical substances not authorized by a physician.

14.8.9 To have visitors as specified below by mutual agreement between the licensee and the visitors, provided the rights of others are not infringed upon.

14.8.9.1 Relatives, during waking hours, unless prohibited by court order or by the child's authorized representative.

14.8.9.2 The authorize representative.

14.8.9.3 Other visitors unless prohibited by court order or by the child's authorized representative.

14.8.10 To wear his/her own clothes.

14.8.11 To possess and control his/her own case resources, unless otherwise agreed to in the child's needs and services plan and by the child's authorized representative.

14.8.12 To possess and use his/her own personal possessions, including toilet articles.

14.8.13 To have access to individual storage space for his/her private use.

14.8.14 To have access to telephones, both to make and receive confidential calls, provided that such calls are not prohibited by court order or by the child's authorized representative, or are not prohibited as a form of discipline. However, such use shall not infringe upon the rights of others, nor tie up the telephone during emergencies.

14.8.14.1 The licensee shall be permitted to require reimbursement for long distance calls from the child to his/her authorized representative.

14.8.14.2 The licensee shall be permitted to prohibit the making of long distance calls upon documentation that requested

reimbursement for previous long distance calls has not been received.

14.8.14.3 Calls permitted to be prohibited as a form of discipline shall not include calls to the child's authorized representative or placement agency.

14.8.15 To have access to letter writing material and to send and receive unopened correspondence unless prohibited by court order or by the child's authorized representative.

14.8.16 The licensee shall ensure that each child is accorded the personal rights specified in this section.

CHAPTER 9

14.9 AGREEMENT WITH FOSTER PARENTS

14.9.1 The Hoopa Tribal Court agrees to accept its responsibilities including, but not limited to, visiting the foster family on a regular basis and providing all necessary services to the foster family, the child, and the child's own family. Refer to form.

14.9.2 The foster parents agree as follows:

14.9.2.1 To accept the child or children named above for temporary foster care and maintain the child(ran)'s health and welfare.

14.9.2.2 To accept the condition that any children placed for foster care in the home by the Tribal Court are placed for the purpose of their foster care only, and not for the purpose of adoption.

14.9.2.3 To accept the court's decision to remove a foster child from the home when it deems such removal is in the child's best interest.

14.9.2.4 To accept the condition that the court is responsible for making, carrying out, or approving all plans for the children placed by them in the foster home.

14.9.2.5 To cooperate with the Tribal Children's Court and the Tribal Social Services Department in such planning and to follow their suggestions and recommendations regarding the care, education, and training of the foster children.

14.9.2.6 To allow representatives of the social services department to visit the home at mutually agreed upon times.

14.9.2.7 To report at once to the Tribal Social Services Department any change of address or change in family composition; to secure permission before making any plans for taking the children out of state for any purpose; to notify the department of vacation plans away from the area.

14.9.2.8 To report to the Hoopa Social Services Department any change of address or change in family composition; to secure permission before making any plans for taking the children out of state fore any purpose; to notify the department of vacation plans away from the area.

14.9.2.9 To contact the Hoopa Health Association for medical services and emergencies rendered to the foster child.

14.9.2.10 To contact the Tribal Social Services Department in all emergencies.

14.9.2.11 To authorize the Tribal Social Services Department to investigate the medical status of the household (adults and children) to insure the health of the foster child.

CHAPTER 10

14.10 PERMANENCY PLANNING FOR INDIAN CHILDREN IN FOSTER CARE

14.10.1 OBJECTIVE OF PERMANENT PLAN

14.10.1.1 To place child in permanent living situation as soon as possible.

14.10.1.2 Reunify family if possible.

14.10.1.3 If reunification is not possible, place child in permanent living situation with or without termination of parental rights. A permanent situation may be one of the following: Foster care, adoption, guardianship. Preferences in these placements will be with relatives or extended family members with stable living situations.

14.10.2 CRITERIA FOR PLACEMENT

14.10.2.1 If the child has been harmed or threatened or otherwise endangered.

14.10.2.2 If the child is a runaway from another area and is being harmed or threatened and is within Tribal Court scope of jurisdiction.

14.10.2.3 If the child is neglected or dependent.

14.10.2.4 If care, custody, and control is assigned by a court system and relative resources have been explored and are not available.

14.10.2.5 When in home plan has been explored and are not appropriate.

14.10.2.6 When day care services have been explored and are not appropriate.

14.10.3 PLACEMENT RESOURCES TO BE EXPLORED

Child must be placed in "reasonable proximity" to his/her home. Meeting special needs precedes over proximity.

14.10.3.1 Order of preference according to the best interest of the child is as follows:

- (a) Member of the child's extended family.
- (b) Licensed foster home approved by the Tribal Court.
- (c) Institution for children approved by Tribe or operated by an Indian organization.
- (d) A BIA, state, or private agency licensed or approved foster home, group home, or institution.
- (e) Emancipation if allowed by Tribal Code.

14.10.3.2 ADOPTIVE PLACEMENT RESOURCES

- (a) Members of extended family.
- (b) Other Tribal members.
- (c) Other Indian families.
- (d) Non-Indians.

14.10.4 CASE PLAN

The following are steps to be set out in permanency planning:

14.10.4.1 REASON FOR REMOVAL

Be as specific as possible in describing the time, conditions, and need for removing the children.

14.10.4.2 OBJECTIVES OF THE PARTIES

The Tribal Social Services Department and the parents agree to the following goals:

- (a) Appropriate care and placement of the children during the time they are in the care, custody, and control of the social services department or Tribal Court.
- (b) Strengthening the family unit.

(c) Reuniting the family.

14.10.4.3 APPROPRIATE CARE AND PLACEMENT

The children will be maintained in licensed or approved foster homes or the children may be maintained in the home of extended family. The social worker will inspect the homes on a regular basis to insure that they remain proper environments for the children. The children are eligible for IHS services.

14.10.4.4 PLAN FOR THE USE OF STRENGTHENING THE FAMILY UNIT

(a) List available resources to be used to strengthen the family.

(b) Child Support: If the parents are able to contribute, insert amount. If they cannot, use this statement: " From the financial statement indicating their income, the Tribal Social Services Department believes that the parents cannot be expected to pay any child support but may contribute to the child(ren)'s support in any other feasible manner."

(c) Visitation: A written visitation plan will be established by the Tribal Children's court and the parents. The Tribal Social Services Department will provide transportation if necessary and if possible.

(d) Special Provisions: List medical, emotional, educational, or any special provisions in this section.

14.10.4.5 REUNITING THE FAMILY

When the parties agree that the children are entitled to grow up with a family environment and they agree that a timetable is necessary and will be strictly enforced. The parents are responsible for making necessary changes in their lifestyle. The social worker will be responsible for providing support services.

(a) 1 to 6 months: The parents realize that this is the critical period. They understand that they must make active progress so that the family can be reunited. In order to insure that progress is ongoing and in order to monitor the progress, the social worker will meet with the parents on a weekly basis to assist progress and counsel with them about any deficiencies or any problems. The social worker will also monitor the progress of the parents with any other agency assisting them and require reports from the agencies.

(b) 6 to 12 months: The parents understand and agree that if the children are in the custody of the Tribal Court at that time, the entire treatment plan should be re-evaluated and goals established so as to eradicate any deficiencies.

(c) 12 months or longer: The parents agree that if the child is in the custody of the Tribal Court for such an extended period of time because of their failure to make any progress, then termination of parental rights will be considered.

14.10.4.6 REINFORCERS

The social services department is the main reinforcer in this case and will monitor the progress of the parents in order to detect any deficiencies. If deficiencies are noted, the social worker and the parents will attempt to remove the deficiencies.

14.10.4.7 SPECIFY ROLE OF DEPARTMENT OF SOCIAL SERVICES

- (a) The social worker will be the coordinator of the treatment plan, in conjunction with the child protection team, if one exists on the reservation.
- (b) The social worker will be in continuous contact with the parents to ensure the performance of the required tasks.
- (c) The social worker will further establish an ongoing relationship with the relatives and extended family members helping the parents, and other agencies providing services.

14.10.4.8 MONITORING TREATMENT PLAN

The social services department will keep an up to date record on the family. It will include all court records, as well as records of services rendered by the other agencies providing services. An ongoing file will include a record of all contacts with the parents as well as contacts with relatives and other agencies. Copies of all reports will be attached to the request for review. In this manner the court will be able to check parental performance and department performance towards reuniting the family.

14.10.4.9 RESOURCES

List all resources needed to fulfill the treatment plan.

14.10.4.10 APPROVAL OF CASE PLAN

Once case plan is decided upon and written, it must be drafted and signed by all parties involved: social worker, parent(s), child (if age appropriate), and Tribal Judge.

14.11 SEVERABILITY

If any part of this Code is held to be invalid the remainder shall continue to be in full force and effect to the greatest extent possible.

C E R T I F I C A T I O N

I the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which seven (7) were present constituting a quorum of a Regular Meeting thereof; duly noticed, and signed this 18th day of September, 1997; and that this Ordinance was duly adopted by a vote of six (6) for and none(0) against and that said Ordinance has not been rescinded or amended in any way.

DATED THIS 18th DAY OF September, 1997.

Duane Sherman, Sr. Chairman
Hoopa Valley Tribal Council

ATTEST: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council